# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS BEAUMONT DIVISION

CHARLES MCGUIRE, 

Plaintiffs,

VS.

CIRRUS DESIGN CORPORATION; JEFFREY R. NELSON: UNIVERSITY OF NORTH DAKOTA AEROSPACE FOUNDATION,

Defendants.

CIVIL ACTION NO. 1:07-cv-683- RHC

## **DEFENDANTS' OFFER OF JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Now come Defendants, JEFFREY R. NELSON and UNIVERSITY OF NORTH DAKOTA AEROSPACE FOUNDATION ("Defendants"), and herein make this Offer of Judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure.

#### I. Introduction

1. This suit stems from an accident involving a Cirrus Design SR-22 GTS, Registration Number N658CD on August 5, 2006 at or near Boyceville, Wisconsin. Plaintiff, CHARLES McGUIRE, was in the fourth day of what is normally a three day transition course practicing emergency procedures when the accident occurred. Plaintiff sued Defendants for personal injury damages alleging various causes of action to include negligence, malice, negligence per se, breach of warranty, fraud and breach of contract. 2. Defendants hereby make this offer of judgment with regard to all claims made by Plaintiff save and except those claims made in Count V of Plaintiff's Amended Complaint. This offer is being made more than ten days before trial as required by FED. R. CIV. P. 68(a); Ramming v. Natural Gas Pipeline Co., 390 F.3d 366, 370 (5th Cir. 2004).

## II. Offer of Judgment

- 3. Defendants collectively offer the sum total of SIX HUNDRED THOUSAND and 00/100 DOLLARS, (\$600,000.00) which sum shall include all potential claims of Plaintiff for costs and attorney's fees, for which judgment may be entered on Counts I, II, III, IV and VI of Plaintiffs Amended Complaint.
- 4. This offer is conditioned on Plaintiff's dismissal with prejudice of all claims against CIRRUS DESIGN CORPORATION alleged, or which could be alleged, under Counts I, II, III, IV, V and VI of Plaintiff's Amended Complaint. This offer is further conditioned on Plaintiff's dismissal with prejudice of all claims against UNIVERSITY OF NORTH DAKOTA AEROSPACE FOUNDATION and JEFFREY NELSON alleged, or which could be alleged, under Count V of Plaintiff's Amended Complaint.
  - 5. Defendants agree to pay their costs accrued to date.

### III. Deadline to Accept

- 6. This offer of judgment will remain open and irrevocable for ten days after service. See Fed. R. Civ. P. 68(a); Ramming, 390 F.3d at 370.
- 7. If plaintiff does not respond within ten days after service, the offer is considered withdrawn. FED. R. CIV. P. 68(b).

Respectfully submitted,

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By: /s/ Ron A. Sprague

RON A. SPRAGUE

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COUNSEL FOR DEFENDANTS CIRRUS DESIGN CORPORATION, JEFFREY R. NELSON AND UNIVERSITY OF NORTH DAKOTA AEROSPACE FOUNDATION

#### **CERTIFICATE OF SERVICE**

I hereby certify that on January 16, 2009, I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system which will send notification of such filings to the following:

Mr. Jack E. McGehee H.C. Chang McGehee ★ Chang 1250 Wood Branch Park Drive, Suite 625 Houston, Texas 77079

Mr. Oliver Beiersdorf Reed Smith LLP 599 Lexington Avenue New York, New York 10022

and I hereby certify that on January 16, 2009 I delivered a copy of the foregoing pleading to the following non-registered participants:

None

/s/ Ron A. Sprague RON A. SPRAGUE